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***Implementation of Extractive Industries Transparency Initiative in Kazakhstan: problems and prospects***

*Extractive industries play an important role in the economies of over 50 developing countries, home to some 3.5 billion people. Rich natural resources could be considered as the main precondition for fast economic growth and sustainable improvement of living standards. However, in practice not every country is able to develop a proper strategy of using natural resource revenues.*

*Kazakhstan joined Extractive Industries Transparency Initiative to improve the resource revenue management. We should define what actions the Government and extractive industry companies are to take in order to insure the transparency of resource revenues, the role of civil society in the implementation of EITI, and ways to provide public participation in this process.*

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Центр анализа общественных проблем

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## List of abbreviations

**DFID** – Department for International Development

**EITI** – Extractive Industries Transparency Initiative

**GDP** – gross domestic product

**IMF** – International Monetary Fund

**IFI** – international financial institute

**JSC** – joint stock company

**KIOGE** – Kazakhstan International Oil and Gas Exhibition

**KPA** – Kazakhstan Petroleum Association

**KR** – Kyrgyz Republic

**NGO** – non-governmental organization

**PSA** – production sharing agreement

**RK** – Republic of Kazakhstan

**SOCAR** – State Oil Company of Azerbaijan Republic

**TNC** – transnational company

**UN** – United Nation (Organization)

**VAT** – value added tax

# Implementation of Extractive Industries Transparency Initiative in Kazakhstan: problems and prospects

**Meruert Makhmutova**

*«The people in power do not possess the wealth of nation. All those in power should be accountable to the people on how they use this wealth»*

*Simon Bolivar, XVIII century*

## 1. Introduction

Proper management of natural resource revenues includes their equitable distribution between the state and extractive industry companies, between the present and future generations. In resource-rich countries it is necessary to promote transparency of relations between governments and extractive industry companies.

*Extractive Industries Transparency Initiative* (hereinafter – EITI) is an important part of international efforts to improve resource revenue management. It was launched by Tony Blair, British Prime-Minister, at the Johannesburg World Summit on Sustainable Development in September 2002.

For the first time Kazakhstan expressed its support for EITI in June 2003. On 5 October 2005, the «Memorandum of Understanding on Implementation of the Extractive Industries Transparency Initiative in the Republic of Kazakhstan» (hereinafter – Memorandum) was signed at KIOGE-2005. Vladimir Shkolnik, Minister of Energy and Mineral Resources of the RK, 4 Parliament Members and 24 oil and gas companies, working in Kazakhstan, signed the Memorandum (Annex 2). Shkolnik stated that «EITI does not require the adoption of any concrete international legal commitments and will bring significant political dividends to Kazakhstan in the future».

The implementation of the EITI implies answering the following questions:

***One of the key EITI criteria is monitoring of extractive industries payments by civil society***

- What actions should Government and extractive industry companies take to insure the transparency of revenues?
- What is the role of civil society in the enhancement of revenue transparency, and how to provide public participation in this process?

One of the key EITI criteria is monitoring of extractive industries payments by civil society. The NGO Coalition «Oil revenue – under the control of society!», which had been involved in the process of development and discussion of the Memorandum, refused to sign the document. Nevertheless, the news programs of «Kazinform»<sup>1</sup> Agency and «Khabar»<sup>2</sup> TV Channel hurried to inform that the Memorandum was signed by NGOs. Why did representatives of civil society refuse? Did it make sense to sign the «raw» Memorandum timed to coincide with KIOGE? In order to clarify our position, we will consider the content of the Memorandum.

## 2. Extractive Industries Transparency Initiative

*Not every country is able to develop a proper strategy of using natural resource revenues*

Extractive industries play an important role in the economies of over 50 developing countries, home to some 3.5 billion people.<sup>3</sup> Rich natural resources could be considered as the main precondition for fast economic growth and sustainable improvement of living standards. However, in practice not every country is able to develop a proper strategy of using natural resource revenues. The fiscal systems of many developing countries rich in natural resources lack proper accountability mechanisms, which along with insufficient transparency of extractive industries revenues cause the growth of corruption.

There is also a threat of «Dutch Disease», when export of natural resources and related excessive money inflow strengthen the local currency and reduce the competitiveness of the economy. The development of other sectors is suppressed; an increase in local currency exchange rate causes a decrease

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<sup>1</sup> <http://www.inform.kz>.

<sup>2</sup> <http://www.khabar.kz/index.cfm?id=6052>.

<sup>3</sup> Extractive Industries Transparency Initiative. Draft of source book. DFID. London, 2003.

in other export, with the exception of the export of natural resources.

Studies of different oil-exporting countries revealed that «Dutch Disease» has negative effect on:

- **the economy:** increase in inefficient government expenditures, debt accumulation, unemployment;
- **the administration:** weakened links between tax-payers and the government due to the domination of extractive sector revenues; possibility to acquire loans through political patronage; suppression of the opposition;
- **the security:** dependence of conflicts on the fluctuation of prices; decrease of government accountability; corruption; extortion.

*Export of natural resources and related excessive money inflow strengthen the local currency and reduce the competitiveness of the economy*

EITI is based on the idea that high corruption and often low economic development in resource-rich countries are the result of non-transparent relations between governments and extractive industry companies.

#### *Drivers of EITI<sup>4</sup>*

- **Democratization and better governance** by encouraging greater openness and accountability on payments and revenues, and enhancing opportunities for closer scrutiny of this process by civil society.
- **Pro-poor growth** - greater transparency creates the demand for revenues to be distributed more equitably, rather than being wasted through corruption.
- **Conflict prevention** – indirectly, EITI seeks to reduce conflict by tackling two of its main causes – extreme disparities in distribution of wealth and the lack of accountable governance systems.

EITI aims to build simple and understandable reporting mechanism in both companies and governments to produce publicly available information on payment and revenue flows in the countries with rich natural resources.

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<sup>4</sup> Presentation of Catherine Inglehearn, Acting British Ambassador, at the Roundtable «Implementation of Extractive Industries Transparency Initiative in Kazakhstan», arranged by the Public Policy Research Center on 5 July 2005 // *PPRC Newsletter* – #9 (40). – 22. 07. 2005.

*What is a resource-rich country?*

*The IMF defines countries that are rich in mineral resources on the basis of following criteria:*

The International Monetary Fund (IMF) draft *Guide on Resource Revenue Transparency*<sup>5</sup> defines countries that are rich in hydrocarbons and/or mineral resources on the basis of the following criteria:

- an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenues of at least 25% during the previous three years;
- an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25% during the previous three years.<sup>6</sup>

*What countries are advised to join the EITI?*

*...the average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenues of at least 25% during the previous three years*

In the opinion of experts of the Department for International Development (DFID), who developed the algorithm of EITI implementation, the following factors are to be taken into account:

- GDP (i.e. capacity for big win);
- Extractive industries sector's share in GDP;
- GDP per capita;
- Equity of wealth distribution;
- *Transparency International* perception of corruption rating;
- Conflict potential.

*...the average share of hydrocarbon and/or mineral resources export proceeds in total export proceeds of at least 25% during the previous three years*

*What levers can be used to encourage countries to join EITI?*

EITI is voluntary, however the process of its implementation will be affected by:

- pressure from donors on transparency issues;
- influence of international financial institutions (IFIs);
- unique political moments – e.g., elections.

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<sup>5</sup> Guide on Resource Revenue Transparency. International Monetary Fund, June, 2005.

<sup>6</sup> Extractive Industries Transparency Initiative. Source book. DFID. London, 2005.



### ***Principles and criteria of EITI***

EITI is aimed at the creation of simple and clear accountability mechanisms for companies and governments on payments and revenues. Revenues of companies, extracting oil, gas and metals, in the form of taxes, transit duties, royalties, bonuses and other payments should promote economic growth and social development in countries in transition and developing countries.

Insufficient accountability and transparency of these revenues result in corruption, conflicts and poverty.

Resource-rich countries often feature high levels of corruption. For example, Nigeria received US\$ 340 billion of oil revenues in the course of 40 years.<sup>7</sup> However, a significant share of this money ended up on the bank accounts of corrupt functionaries: it is believed that General Abacha, military dictator in the 1990s, stole about US\$ 4 billion while he governed the country for 5 years. The annual income per capita decreased from US\$ 800 to US\$ 300 within 25 years. The government of the country is not trusted; infrastructure does not meet contemporary requirements and deteriorates; Nigeria fully depends on oil, and this kills other sectors of the economy.

Revenues from mineral resources might become an engine for economic growth and promote the development of not only extractive, but also manufacturing sectors. It will be possible only if transparency of revenues is insured, as well as the efficiency of their use.

EITI emphasizes the importance of the extractives sector in the promotion of economic growth, stability and peace. The implementation of its principles should promote transparency of revenues and payments to the government from all extractive industry companies.

Principles of EITI have been agreed at the first International EITI Conference, organized by the British Government in June 2003 (Annex 1).

The EITI *Criteria*<sup>8</sup>:

1. Regular publication of all material oil, gas and mining payments by companies to government (“payments”) and

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<sup>7</sup> Anna Borzello. Nigeria – typical example of the “paradox of plenty”  
// <http://www.bbc.co.uk>.

<sup>8</sup> Extractive Industries Transparency Initiative Source book, DFID. London, 2005

***EITI is aimed at the creation of simple and clear accountability mechanisms for companies and governments on payments and revenues***

***Revenues from mineral resources might become an engine for economic growth***

all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debates.
6. A public, financially sustainable work plan for all the above is developed by host government with assistance IFIs where required including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

***What actions should be taken by the countries that joined the EITI? What benefits can they draw?<sup>9</sup>***

***The government is required to declare all revenues and payments from transnational companies and national companies***

The EITI implementation requires that government declares all revenues and payments received from transnational companies (TNCs) and national extractive companies. The published report must include not only payments and revenues, but also shares in the Production Sharing Agreements (PSAs). Government should establish rules for all companies and provide for the publication of any changes in the confidential agreements signed with extractive industry companies.

As a result of these efforts, transparency will contribute to an improved investment climate in the country. The government

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<sup>9</sup> Proceedings of the Roundtable «Extractive Industries Revenue Watch in Kazakhstan: methodical and practical aspects». – Almaty: Public Policy Research Center, 22 December 2003 – p. 9.

will have better conditions for attracting donors and IFIs. The political stability will be promoted, and conflict potential will be reduced.

***What should companies that joined the EITI do? What are the benefits?***

First of all, companies should disclose all payments, not only taxes, royalties, bonuses they pay to state bodies, but also PSA information. National state-owned companies should publish all tax and non-tax payments. This will make it possible to aggregate information from all sources, if there were confidentiality conditions included in certain agreements.

***Companies should disclose all payments made to state bodies***

Political and economical stability will allow companies make long-term investments. The social responsibility mandates will be improved; the possibility of double taxation will be reduced. This will provide all concerned parties with information about extractive companies and increase their responsibility for the prudent use of natural resources. This is relevant not only to TNC, but to national companies as well.

***How will civil society benefit from the EITI implementation? Which steps should they take?***

The community will have an improved access to information on government revenues, which makes the government more accountable to the community. The accountability of all extractive companies will be possible if all companies publish all payments and taxes. The informed civil society can propose better arguments for a constructive dialogue with companies and the government. Civil society will be able to carry out a responsible and rational research of all issues using evidences and not just rhetoric. They may approve those, who introduce improvements, and to put pressure on those who are not in a hurry to do so.

***The informed civil society can propose better arguments for a constructive dialogue with companies and the government***

At present, EITI is a recognized international brand, it:

- provides a clear transparency model, applicable to other sectors of the economy, improves an investment climate and reduces corruption;
- gives an example of multilateral democratic participation in extractive sector revenues monitoring;
- serves as an indicator of the dedication of governments to the transparency principles for IFIs;

- reduces risks of companies and investors through the promotion of more stable and accountable governance.

The EITI was supported by the governments of the UK, other G8 countries, Norway, as well as the World Bank and the European Bank for Reconstruction and Development. The heads of the G8 countries issued the Declaration on Fighting Corruption and Improving Transparency in June 2003 at Evian: «We will encourage governments and companies to disclose their revenue flows and payments from the extractive sector». The largest oil and gas companies (ChevronTexaco, Shell, British Gas, ConocoPhillips, Total SA, ExxonMobil) and Investor's Coalition expressed their support for EITI. It was also supported by such non-governmental organizations as «Publish what you pay» Coalition, Open Society Institute, Transparency International, and Global Witness; and by the UN and the International Energy Agency.

### 3. Review of countries who joined EITI

Azerbaijan, Ghana, the Kyrgyz Republic and Nigeria were the first to join EITI in 2003. These countries developed work plans for EITI implementation; accountability reports are already published or discussed.

The DFID arranged the second EITI conference on 17 March 2005 in London.<sup>10</sup> Eight heads of states declared their willingness to join EITI. At present, 12 countries discuss the EITI implementation: Peru, Cameroon, Congo, Niger, San Tome and Principe, Tomor Leste, Trinidad and Tobago and others. IFIs and different donors will assist these countries in ensuring transparency of extractive industries.

We are interested in the experience of our neighbors: Azerbaijan and Kyrgyzstan.

*In 2004 the share of the oil sector was 31% of GDP and 47% of state budget revenues of Azerbaijan*

#### **Azerbaijan**

To a great extent the economy of Azerbaijan depends on the development of its oil sector. In 2004 the share of the oil sector was 31% of GDP and 47% of state budget revenues.<sup>11</sup> Oil

<sup>10</sup> Arbabaeva G. «Ambassador Sharp: «Extractive Industries Transparency Initiative is very important for Kazakhstan» // *Panorama*. – #11. – 25. 03. 2005.

<sup>11</sup> M. Makhmutova, Budget Process in the Caspian Countries: Experience of Kazakhstan and Azerbaijan // *Policy Studies*. – #2(07). – 2005. – P. 8.

export in 2004 was 62.7% of total export of the country.<sup>12</sup> GDP per capita was US\$ 1,041 in 2004.<sup>13</sup> Azerbaijan is a low income country. Its high level of poverty - 49% of the population live below the poverty line - shows the unequal distribution of oil wealth. It is not surprising that Azerbaijan was one of the first countries who expressed their wish to implement EITI.

***Oil export in 2004 was 62.7% of total export of the country***

In our opinion, the political decision to join EITI was influenced by the preparations for the transfer of power from dying President Geidar Aliev to his son. In May 2003 President Geidar Aliev expressed willingness of Azerbaijan to join EITI. In June 2003 Ilkham Aliev participated in the first EITI Conference in London as head of the State Oil Company SOCAR. In November 2003 he, in the capacity of the President, assigned the Cabinet of Ministers to establish an Inter-Agency Committee on EITI Implementation. The Executive Director of the State Oil Company (SOCAR) led the Committee. It was composed of representatives of the Ministries of Foreign Affairs, Economic Development, Fuel and Energy, Finances, Taxes and Natural Resources, and Statistics. By joining EITI the new president gained legitimacy in the eyes of the international community.

***By joining EITI the new president gained legitimacy in the eyes of the international community***

The first report on the results of 2003 and six months of 2004 EITI implementation was prepared in March 2005. The international company «Deloitte&Touche» audited the report. Auditors found some discrepancies between the government and companies' data.<sup>14</sup>

For example, according to the Government's schedule, the government interest in the foreign companies extractive output of crude oil was 6.6 million barrels, but according to the companies' schedule – 5.9 million barrels. The auditors explained that the difference of 0.7 million barrels occurred because the company which transferred it to the Government had not joined EITI. According to the Government's schedule, the government interest in the foreign companies' output of gas was 794,881.0 thousand cubic meters, whereas there was no data provided on companies. The auditors explained that the government report contained data on associated gas, which two foreign extractive companies transferred to the State

***The auditors revealed discrepancies in the data provided by the Government of Azerbaijan and companies***

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<sup>12</sup> www.economy.gov.az.

<sup>13</sup> World Development Indicators database, World Bank, 2005.

<sup>14</sup> The audit report is available at <http://www.oilfund.az/reports/rep.eng/EITI2003.pdf>.

Oil Company (SOCAR), one of these companies had joined EITI, the other had not joined. The auditors revealed that, in fact, 1,022,380 thousand cubic meters were transferred to the Government, the difference of 257,319 thousand cubic meters was SOCAR's own consumption and technical losses during the production process. The company – member of the EITI recognized the mistake and promised to include this figure into the report.

Other discrepancies between the government and companies' data, revealed by auditors, resulted from the inaccurate reporting and from the fact that some companies were not participating in the EITI.

The EITI implementation in Azerbaijan showed that neither the signed Memorandum, nor the published audit report can guarantee transparency in extractive industries. In spite of well-organized process: establishment of Inter-agency Commission, participation of civil society organizations, consultations with the DFID and IFIs, the outcome – published audit report – did not meet expectations. Thus, replicating this experience does not guarantee the extractive industries transparency.<sup>15</sup>

## **Kyrgyzstan**

*In 2004 the share of the mining industry in Kyrgyzstan was 7.4% of GDP and 7.4% of the budget revenues*

Kyrgyzstan was one of the first countries to test the mechanisms of publishing revenues and payments by the government and extractive companies.

The mining sector share increased from 1.1% of GDP in 1996 to 7.4% in 2004. Only «Kumtor gold company» provided 7.1% of GDP. The mining sector share in the industrial production increased from 9.6% in 1996 to 48% in 2004. Taxes and payments of the mining industry in 2004 accounted for 7.4% of all budget revenues.<sup>16</sup> 40% of total export of the country in 2004 was export of gold. GDP per capita in 2004 was US\$ 431, which places Kyrgyzstan among low income countries. 41% of the population live below the national poverty line.<sup>17</sup>

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<sup>15</sup> «According to Vladimir Shkolnik, Kazakhstan is going to implement the Extractive Industries Transparency Initiative using the experience of Azerbaijan» // [www.kz-today.kz/](http://www.kz-today.kz/).

<sup>16</sup> Report of E. Toromyrzaev, Vice-Minister of Finances KR, at the EITI workshop on 2-3 February 2005 in Paris // [www.eitransparency.org](http://www.eitransparency.org).

<sup>17</sup> World Development Indicators database, World Bank, 2005.

Kyrgyzstan joined EITI in May 2004, after a series of consultations with the IMF, World Bank and DFID. The Committee on the EITI Implementation comprised of government officials, and the Advisory Council led by the Prime-Minister that included civil society and business representatives, scholars, deputies and government officials, were established.

*40% of country  
export in 2004 was  
export of gold*

At the first stage, the mining sector report compiled in the framework of the EITI implementation, included data on fiscal payments by two gold-mining companies: JSC «Kyrgyzaltyn» and JSC «Kumtor gold company». The first Government report of October 2004 was based on the results of the first six months of 2004.<sup>18</sup> It contained consolidated, generalized data on tax and other payments of both companies,<sup>19</sup> which hampered the analysis by companies.

The Accounting Chamber of the Kyrgyz Republic has the right to audit the report on payments and revenues from the extractive industry companies.

*The Accounting  
Chamber of the  
Kyrgyz Republic  
has the right to  
audit the report on  
payments and  
revenues from the  
extractive industry  
companies*

At the second stage, it was planned to include other extractive companies (gold, coal); the second report in March 2005 was to include the results of 2004. The National Committee on Statistics of the KR received an assignment to prepare and publish the report at the second and following stages.

However, the process slowed down. The Accounting Chamber did not complete job. K. Ibraev, expert of the Fuel and Energy Department of the Prime Minister's Office, explained that «Kyrgyzaltyn» and «Kumtor» refused audit by the Accounting Chamber and have not let staff of the Accounting Chamber to conduct audit».<sup>20</sup> The National Committee on Statistics received basic data from extractive companies in March 2005 and did not publish them, promising to publish data for two half-year terms at the same time: 2<sup>nd</sup> half of 2004 and 1<sup>st</sup> half of 2005. The data required from companies and government agencies were gathered, but the access to the data was denied due to need to update the current reporting mechanism in a view of commercial confidentiality. The World Bank recommended not

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<sup>18</sup> [www.minfin.gov.kg](http://www.minfin.gov.kg).

<sup>19</sup> *EITI in Kyrgyz Republic* Newsletter. Bishkek. – 2004.

<sup>20</sup> What the civil society thinks. Comments of Roundtable participants on the second report on EITI // AKIpress. – #10, October 2005 – p. 24.

*The Advisory Council has no access to information, which paralyses its activity*

to publish the data since the discrepancies exceeded the allowed 1-2%.<sup>21</sup>

Thus, the EITI implementation in Kyrgyzstan faces some troubles. There are many reasons for this. The change of government resulted in changes in the composition of the Committee on the EITI Implementation. The Advisory Council has no access to information, which paralyses its activity. Civil society has no access to the conditions and contents of government agreements with foreign extractive companies. Individual taxation conditions, settled in the contracts, export of production by lower prices through offshore reduce the contribution of the extractives sector to the budget.

Some procedure issues were not solved. There are problems with auditing by the Accounting Chamber and funding of independent audit. There are discrepancies between the reports of the government and extractive companies.

In general, the willingness of the Kyrgyz Government to ensure the gold revenue transparency is positive; however the gold sector share in GDP and fiscal revenues is not big. Perhaps, after the EITI mechanism is tested in the gold sector, it can be used to increase transparency in the agriculture, which makes up one third of GDP.

## 4. EITI implementation in Kazakhstan

*Extraction and export of mineral resources, first of all, oil and gas, supported the average annual economic growth of 10% over the last five years*

The proven reserves of 39.6 billion barrels of oil and 3 billion cubic meters of gas (BP, Statistical review of World Energy, 2005), place Kazakhstan among the top ten countries in the world. Moreover, the country is rich in other mineral resources.

To a great extent, the extraction and export of mineral resources, first of all, oil and gas, supported the average annual economic growth of 10% over the last five years. The GDP in 2004 was US\$ 40.7 billion,<sup>22</sup> with 49.5% being the share of oil and gas industry.<sup>23</sup> GDP per capita in 2004

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<sup>21</sup> Transparency of the Mining Industry. Report of the Economic Policy Institute «Bishkek consensus» // AKIpress. – #10, October 2005 – p. 4.

<sup>22</sup> World Development Indicators database, World Bank, 2005.

<sup>23</sup> Assessment the Ministry of Economy and Budget Planning conducted on contribution of oil extraction into GDP taking into consideration multiplicative effect from production of oil extraction goods and services.



was US\$ 2.710,<sup>24</sup> which placed Kazakhstan among middle income countries.

Export of oil and gas condensate in 2004 made up 59% of total export. Oil and gas sector provided 29% of state fiscal revenues. By 2015 the Government projects to triple extraction to over 3 million barrels per day, which means strengthening of the extractive sector domination in the economy.

*Is national wealth distributed fairly?* The Soviet principle of equality was undermined during the transition period, and «the middle class disappeared, its place taken by a few shockingly rich oligarchs, millions of people were thrown into poverty, which significantly complicated the formation of a democratic society and state based on rule of law». <sup>25</sup> These words of Joseph Stiglitz, Nobel Prize Laureate, about Russia would hold for Kazakhstan as well.

The social differentiation of society deepens against the background of rapid economic growth. According to 2004 data of the Statistical Agency of the RK, 16% of Kazakhstani population lives below the poverty line (in rural areas – 25%, in urban areas – 9%), but “Forbes” enlists three billionaires, whose wealth was accumulated in Kazakhstan in the course of privatization of key industrial enterprises.

According to Transparency International rating, Kazakhstan is among the countries with high level of corruption (countries with index below 3).<sup>26</sup> In 2004 Kazakhstan was 122<sup>nd</sup> among 146 countries, in 2005 – 107<sup>th</sup> among 158 states. In 2004 corruption perception index was 2.2, in 2005 – 2.6.

Erlan Idrissov, Ambassador of the Republic of Kazakhstan to the UK, stated at the first International EITI Conference in London on 17 March 2003: «We realize the importance of transparency as a tool to provide and ensure sustainable development. We want to see the multiple effect from the development of downstream and adjacent industries and sectors in our economy, to make it modern, self-sustainable and strong...

***The Soviet principle of equality was undermined during the transition period***

***16% of Kazakhstan's population live below the poverty line, but “Forbes” enlists three billionaires***

***Kazakhstan is among the countries with high level of corruption***

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<sup>24</sup> World Development Indicators database, World Bank, 2005.

<sup>25</sup> <http://rusref.nm.ru/stigpage.htm>.

<sup>26</sup> In 2005 Kazakhstan reached 107<sup>th</sup> position of corruption perception index, Transparency International/ <http://www.gazeta.kz>.

*The Presidential elections of 2005 became an important factor affecting Kazakhstan's decision to join EITI in 2005*

*The main issue for Kazakhstan is development of implementation mechanisms for its transparency program*

Kazakhstan is ready to continue practical efforts to discuss ways to implement EITI in the most efficient way».

In order to discuss future participation of Kazakhstan in EITI, Public Policy Research Center conducted a roundtable in November 2003. At the roundtable Sefton Darbi, Policy Adviser of the DFID, presented Action Plan on EITI promotion.<sup>27</sup>

However in 2003-2004 the Government of Kazakhstan took no concrete actions to join EITI. On 16 March 2005, Maral Itegulov, Member of Majilis of the Parliament, made an inquiry to the Prime-Minister of Kazakhstan and called for speeding up the process of joining EITI. He said: «this inquiry was triggered by the demand of more than 40 civil society organizations to take oil revenues under the public oversight».<sup>28</sup>

The Presidential elections of 2005 became an important factor affecting Kazakhstan's decision to join EITI. President of Kazakhstan Nursultan Nazarbaev announced support for EITI on 16 June 2005 at the International Business Conference of the Asia Society.

On 5 July 2005, Public Policy Research Center held a roundtable on Extractive Industries Transparency Initiative implementation in Kazakhstan.<sup>29</sup> The first draft of the Memorandum developed by the Working Group of the Government was disseminated at the Roundtable. «Now the main issue for Kazakhstan is development of implementation mechanisms for its transparency program. They are different in each country, but this is not crucial; the most important is consensus among all concerned parties», – underlined Catherine Inglehearn, Acting British Ambassador. Speakers noted that in order to implement EITI in Kazakhstan development of methodological frames, elaboration of stages (preparatory stage, implementation stage, monitoring and evaluation), planning of tasks, and approval action plan with all concerned parties and identification of necessary financial resources are required.

<sup>27</sup> Proceedings of the Roundtable «Extractive Industries Revenue Watch in Kazakhstan: oil operations taxation», 21 November 2003, Public Policy Research Center, Almaty. – 2003.

<sup>28</sup> Izdibaev T. Deputy Itegulov appeals to join the Extractive Industries Transparency Initiative // *Panorama*. – #10. – 18. 03. 2005.

<sup>29</sup> Kazakhstan as regional leader should be more active in EITI implementation // *Panorama*. – #26. – 8. 07. 2005.

## **Parties involved in signing of the Memorandum**

### ***Government***

According to the DFID, the Government is responsible for progress of the EITI implementation; it should make all necessary efforts to involve industry and civil society organizations at the earlier stage.<sup>30</sup>

The Government of Kazakhstan established the Inter-agency Working Group on the EITI implementation. It consists of representatives of the Ministries of Finance, Economy and Budget Planning, Foreign Affairs, Industry and Trade, Justice, Environment Protection, and the national company KazMunaiGas. Minister of Energy and Mineral Resources Shkolnik, was appointed Head of the Group.

The Working Group is authorized to develop a consolidated national report on proceeds to the government and/or National Oil Fund from the extractive industry companies.

### ***Parliament***

The acknowledgement of the Parliament as a Party in the Memorandum would recognize the important role of the Parliament in the control over extractives sector revenues.<sup>31</sup> However, the selection of deputies and, especially, inclusion them as parties into the Memorandum are unjustified. Parliament as a collective body should be represented as a whole. According to the Law RK «On Parliament of the Republic of Kazakhstan and Status of Deputies», Deputies of the Parliament may represent only themselves, but not the whole Parliament. The Memorandum is signed «on behalf of the Parliament of the RK» with the list of 4 deputies attached, which is wrong in principle: Deputies are not eligible to act on behalf of the Parliament.

In a number of cases, provided for in the Memorandum (participation in the Selection Group, National Stakeholders Council), such an arrangement will cause confusion. The Working Group, oil companies, non-governmental organizations

*The Government should make all necessary efforts to involve industry and civil society organizations in the process of EITI implementation*

*The Parliament should have the right to control extractives sector revenues*

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<sup>30</sup> Extractive Industries Transparency Initiative. Source book. DFID. London, 2005.

<sup>31</sup> Proposals to the draft Memorandum of Understanding on Extractive Industries Transparency Initiative (as of 18.08.05) // *PPRC Newsletter*. – #12(43). – 23. 08. 2005.

*The attempts of the Government to time the signing of the Memorandum to coincide with KIOGE limited the signing extractive companies to the oil sector only*

can delegate their representatives. However MPs do not have deputies to represent them. Or, for instance, how 4 MPs can delegate three people: should they throw dice?

The Parliament should have the right to control extractive industry revenues. Unfortunately, MPs have no access to the relevant information.

### **Extractive Industry companies**

One of the criteria of the EITI implementation is participation of all companies, including national ones. Initially 13 mining sector companies and 48 oil and gas sector companies – the largest tax payers – were selected for the EITI implementation in Kazakhstan.

KazMunaiGas was one of the first companies that expressed readiness to join EITI. Oil and gas industry companies actively participated in the development and discussion of draft Memorandum through the Kazakhstan Petroleum Association (KPA). However, mining companies did not take active part in discussions, and their position concerning participation in the EITI is unclear.

At the same time, the attempts of the Government to time the signing of the Memorandum to coincide with KIOGE limited the signing extractive companies to the oil sector only.

In our opinion, a broader discussion of EITI with representatives of as many extractive companies as possible, and the Working Group, the British Embassy, and the World Bank should be arranged.

### **Civil Society**

Civil society should be an equal partner in discussing of the EITI implementation in Kazakhstan. One of the criteria of EITI is: «Civil society is actively engaged as a participant in design, monitoring and evaluation of this process and contributes towards public debate». Only in this case the implementation process will comply with the criteria, adopted at the EITI Conference in London in March 2005.

*A broader discussion of the EITI implementation with as many extractive companies as possible should be arranged*

Representatives of «Oil revenues – under the control of society!» Coalition were able to participate only in three meetings of all concerned parties – on 29 July, 11 August and 29 September 2005. Members of the Coalition, mainly from Almaty, were not able to join the meeting on 26 August in Astana as they were notified less than 24 hours before the meeting.

We addressed our comments and recommendations on the draft Memorandum to the Working Group and KPA.<sup>32</sup> At the meeting on 29 September we proposed to include MPs and Coalition members into the Working Group, which would raise their awareness and make them familiar with the reports of the Government and companies. However this proposal provoked strong objections of Vladimir Shkolnik. He had no direct objections against the participation of MPs, but his position against the participation of civil society representatives was strong: «You are not allowed to have access to confidential information». According to the Minister, payments of oil companies to the Government and revenues of the Government comprise the state secret with no access for the civil society.

The proposal of the Coalition to establish the National Stakeholders Council that would meet every six months to discuss the EITI progress was not objected, even though the opinions inside the Coalition differed. In our opinion, neither the minister nor oil companies objected to the idea for they realized that it would be a purely decorative body, with no access to information and no influence on decision-making. We were not to make this proposal, but only insist on the inclusion of Coalition members into the Working Group.

Coalition members proposed to hold up signing the Memorandum, as it does not provide extractive industries transparency, not to link it to the opening of KIOGE. Shkolnik, head of the Working Group, expressed his indignation and noted that James Sharp, British Ambassador, had a similar request in his letter. He sounded offended: we would like to join EITI as soon as possible, but we are advised to wait.

When Coalition members did not sign the Memorandum, Shkolnik answering one of the journalists' questions said, that it is possible find other NGOs to sign it...

Indeed, on 21 October 2005, the Working Group headed by Shkolnik held a National Stakeholders Council meeting of the concerned parties. Outside people were invited to the meeting as civil society representatives. They neither had been involved in the Memorandum design and discussion nor had a clear idea what EITI is.

*Participation of Members of Parliament and NGOs in the Working Group would make them familiar with the reports of the companies and involve them in the decision-making process*

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<sup>32</sup> Proposals to the draft Memorandum of Understanding on Extractive Industries Transparency Initiative (as of 18.08.05) // *PPRC Newsletter*. – #12(43). – 23. 08. 2005.

### **Memorandum Analysis**

*The content of the Draft Memorandum was mostly borrowed from Azerbaijan's Memorandum, which accounts for its shortcomings*

The Working Group together with KPA prepared a draft Memorandum. The content was mostly borrowed from Azerbaijan's Memorandum, which accounts for its shortcomings. Discussing the Memorandum we found some contradictory provisions that hamper full-fledged EITI implementation by Kazakhstan. High emphasis is placed on secondary, minor issues, creating unnecessary fuss, disputes, and agreement procedures.

*The Memorandum provides only for the publication of the audit report to raise public awareness*

For example, the proposal in the draft Memorandum to establish a Selection Group to select an Audit Company replicated the experience of Azerbaijan. Four largest international audit companies were proposed for the selection: Deloitte&Touche, Ernst & Young, KPMG and PricewaterhouseCoopers. The draft Memorandum proposed to delegate three representatives of oil companies to the Selection Group, while the NGO Coalition, the Working Group and MPs were to propose one delegate each. As a result, the Coalition, MPs and the Working Group denounced it as unfair. However, in principle, it does not matter which Audit Company would be selected as they are equally competent. The issue can be left for consideration by the Working Group. It is more important what will be published as a result of the EITI implementation.

The Memorandum provides only for the publication of the audit report to raise public awareness. Publication of initial reports developed by authorized bodies (Ministry of Finance of the RK) and extractive companies is not foreseen. Moreover, item 6(d) states: «The audit company shall at all times keep the individual reports submitted by the Companies strictly confidential and shall not disclose or divulge these reports in whole or in part to any other Parties to the Memorandum, any third parties or the public unless authorized by each submitting company».

In practice it means, that the public, MPs and the Coalition, or “other Parties” according to the Memorandum, will be unaware of companies' payments to the Government. It makes the real EITI implementation questionable.

Item 11 touches upon the same problem: «The Parties agree to treat all materials received in relation to the Memorandum that is not publicly available as strictly confidential until such time as all Parties unanimously agree upon its disclosure or

publication. The Working Group upon mutual agreement of the Parties shall approve the list of materials that shall be published in the press for a wide discussion of the aggregate Report».

The analysis of the previous article shows that the Parties include only 1) Working Group, 2) companies and 3) Audit Company, as they do not disclose reporting information neither to the MPs nor to the Coalition representatives.

The analysis of all Memorandum items reveals that decision making regarding this key issue is restricted to the Working Group and oil companies. In our opinion, MPs, Coalition members should participate in the Working Group, which would make them familiar with the reports of the companies and involve them in the decision-making process. Discussing the draft Memorandum in August and at the meeting in the Ministry of Energy and Mineral Resources on 29 September 2005 we made this proposal, however Minister Shkolnik rejected it. The current level of access to the reports makes the EITI implementation a mere formality, as it preserves the «status quo»: companies are accountable to the Government, at the same time neither Parliament nor civil society are aware of real payments of companies and revenues to the Government from extractive industries.

The line for VAT payment is marked in the *Reporting form on taxes and payments* (See Annex 3). On our opinion, not only paid amounts should be included into the Form, but also the amounts refunded from the budget by VAT taxation of the export on zero rate. In this case positive or negative VAT balance of oil companies could be assessed. Over the last years, mainly non-extractive industries, small and medium enterprises secured VAT into budget, as VAT refund for exporters exceeded taxes they paid.

When discussing the draft Memorandum we noted: «It would be correct if the reports of the companies and the Government show the real extraction not only in barrels as proposed, but also in tons, as the oil grades differ depending on the field: from high-gravity Tengiz oil, close to Brent, to more heavy grades. At present time the Government publishes reports in tons, but budget forecasts oil prices per barrel, preventing evaluation of forecast adequacy. It is well-known that the number of barrels in one ton

***Not only paid amounts should be included into the Form, but also the amounts refunded from the budget by VAT taxation of the export on zero rate***

***Extractive companies should publish data on their payments for social and economic development to the local budgets***

may range from 7.1 to 7.5».<sup>33</sup> The signed Memorandum contains the reporting form presuming inclusion of data in tons.

Oil companies rejected our proposal to publish data on payments for social and economic development made by oil companies to the local budgets.

One of the EITI Criteria is «regular publication of all material oil, gas and mining payments by companies to government (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner». It is evident that published information might be considered «accessible, comprehensive and comprehensible» only if payments of each extractive company – the EITI participant – are published.

*Information could  
be considered  
«accessible,  
comprehensive and  
comprehensible»  
only if payments of  
each extractive  
company – the EITI  
participant – are  
published*

However oil companies and Working Group also rejected our proposal “to make the information on payments of each extractive company easy to access”. We think this information should not be a commercial secret. However, the companies refused flatly, saying that their competitiveness would be violated as competitors will increase the prices knowing the amounts of bonuses paid to the country and break the proposals at the next bids.

The objections of the Working Group were explained the following way: “In accordance with the current legislation of the RK, information on deposit reserves is considered confidential, and the publication of individual reports of the companies will disclose the deposits reserves in indirect way”. According to the Working Group, each company can publish its reports on payments to the budget. This explains rejection to include the requirement on publishing individual reports into the Memorandum. Minister Shkolnik worried that in this case companies would refuse to sign the Memorandum.

Hasty signing of Memorandum hampered the achievement of consensus on the level of information disclosure and involvement of as many extractive companies as possible.

The Government of Kazakhstan and extractive companies should be guided by the best international experience while

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<sup>33</sup> Proposals to the draft Memorandum of Understanding on Extractive Industries Transparency Initiative (as of 18.08.05) // *PPRC Newsletter*. – #12(43). – 23.08.2005.



implementing EITI. For example, the Statoil Norway company made an important contribution into the EITI implementation publishing in 2004 the report on direct and indirect taxes paid in 26 countries, where it works. The “Sustainable Development Report 2004” is available from the company’s website [www.statoil.com](http://www.statoil.com).

## 5. Conclusions

EITI at the initial stage is the way to achieve consensus among all parties involved in the preparation and dissemination of reliable data. Governmental officials hasty to sign the Memorandum hindered the involvement of all concerned parties in the dialogue and achievement of the consensus.

*EITI at the initial stage is the way to achieve consensus among all parties*

The Memorandum signed by the Government and extractive companies is a “gentlemen’s” agreement and has no legal effect. Any Party may withdraw from the Memorandum upon prior written notice to all the Parties specifying the date of withdrawal. The contents of the Memorandum and its signing do not guarantee extractive industries transparency. Prospects of “significant political dividends” look vague.

James Wolfensohn, Head of the World Bank, said at the EITI Conference in March 2005: “Transparency by itself means nothing. If everyone in the government is a swindler, nothing could be done with such transparency. This is the basic moment. Let us not pat each other on the shoulder and praise for the success. This is only the beginning”.

*«Transparency by itself means nothing. If everyone in the government is a swindler, nothing could be done with such transparency»*

In order to ensure extractive industries transparency, all contracts with extractive companies and deals between the Government and oil companies, including taxation conditions, should be made public.

The fifth part of Kazakhstan’s export is carried out via offshore: before 2003 – via Bahamas and Virginia Islands, from 2004 – via Switzerland. Furthermore, transfer prices allow for decreases in the level of taxable income.

Companies should present a calculation of prime costs for extracted oil by each field as well as data on transportation, export prices etc. for adequate evaluation of extractive industries contribution to the budget and the National Oil Fund.

*All contracts with  
extractive  
companies and  
deals between the  
Government and  
companies should  
be public*

The Government and the Parliament should elaborate a strict audit procedure and identify possible withdrawals of resource revenues. Audit should be independent, reliable and based on the best world practices with outcomes available for public.

All companies should be involved in the EITI implementation in order to provide comprehensive information on the extractive industries revenues. Measures to be undertaken in case, if discrepancies in the reports of the Government and companies occur, should be foreseen.

Members of the civil society should not play the role of a “decoration”, but actually participate in the EITI implementation. In order to ensure regular monitoring of the Government and companies’ activity, the educational level should be improved, we should be ready for consistent, painstaking work.

We should keep in mind, that transparency is required for clear reflection of all extractive industries revenues in the budget and their effective use. Civil society should focus on monitoring budget expenditures.

Engaging in the EITI implementation in Kazakhstan we should take into consideration that the signed Memorandum does not resolve all issues brought up during the discussions. In this regard, the Memorandum should be regularly reviewed and amended, to cover problems that will arise during the implementation of the EITI.

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## *Annex 1*

### **EITI Principles agreed at Lancaster House, 17 June 2003:**

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognize that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognize that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognize that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognize the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make - including governments and their agencies, extractive industry companies, service companies, multilateral organizations, financial organizations, investors and non-governmental organizations.

## *Annex 2*

### **MEMORANDUM of UNDERSTANDING on Extractive Industries Transparency Initiative Implementation in the Republic of Kazakhstan**

Memorandum of understanding (**Memorandum**) signed in Almaty  
among

The inter-departmental Working Group (**Working Group**) for drawing recommendations and positions of Kazakhstan on implementation of the British Initiative on Extractive Industries Transparency (**EITI**), established by order of Minister of Energy and Mineral Resources of the Republic of Kazakhstan dated 14 April 2005 <sup>1</sup> 110,

The companies, holding subsurface use rights in extractive industries (Companies) (oil and gas and mining industry) of the Republic of Kazakhstan (**Group of Companies**) (Appendix 1),

The deputies of Parliament of the Republic of Kazakhstan (**Parliament of RK**) (Appendix 2), and

The non-governmental organizations (NGOs) comprising the Coalition «Oil revenue – under the control of society!» of the Republic of Kazakhstan (**Coalition of NGOs**) (Appendix 3),

Hereinafter each individual signatory being a “**Party**” and together the «**Parties**».

The Parties:

- a) welcome the steps taken by the government of the Republic of Kazakhstan directed at increasing transparency in extractive industries, including the country’s joining the International Initiative for development of transparency in the extractive industries activity,
- b) greatly value and agree with the initiative of the Government of the Republic of Kazakhstan that companies operating in the extractive industries of the Republic of Kazakhstan submit for consideration their payment reports under EITI guidelines as long as all necessary approvals are obtained with regard to each company’s contractual confidentiality clauses in their individual contracts for subsurface use including PSAs, and issuance of the respective resolution (decree) by the Government of the Republic of Kazakhstan specifically permitting companies to disclose necessary information for EITI purposes,
- c) recognise the role of deputies of Parliament of the Republic of Kazakhstan, Kazakhstan’s NGOs and civil society in the implementation of EITI,

with the aim of implementing and introducing the EITI application mechanism in Kazakhstan, have agreed on the following:

1. In order to discuss working progress of EITI implementation in Kazakhstan and to oversee EITI implementation process the Parties shall establish the National Stakeholders' Council on EITI Implementation in Kazakhstan (National Stakeholders' Council). Each of the Working Group, the Group of Companies, the Parliament of RK and the Coalition of NGOs shall assign 3 (three) permanent and 3 (three) substitute representatives to the National Stakeholders' Council. Parties have agreed to jointly develop and coordinate with each other regulations for the National Stakeholders' Council. Representatives of international financial institutions can participate in the work of the National Stakeholders' Council ex-officio as mediators and consultants. All decisions shall be reached by members of the National Stakeholders' Council exclusively on the consensus base. National Stakeholders' Council shall meet at least once in 6 (six) months, however every Party has authority to request an additional discussion meeting. The Working Group shall be responsible for organization of the meetings of the National Stakeholders' Council.
2. The Working Group, which is the body authorised to prepare a consolidated national report on receipts into state budget and/or national fund from companies operating in the extractive industries of the Republic of Kazakhstan, and the Companies (having subsurface use rights or, if such rights are held by a consortium, the individual companies that are the partners in such consortium) operating in the extractive industries of the Republic of Kazakhstan shall produce and submit their reports to the audit company once a year on May 1, using the relevant reporting forms approved by all of the Parties. Following the execution of this MOU and the selection of an audit company, the Parties shall work with the audit company to review the forms included in Appendix 4 (which were developed based on EITI guidelines) and to approve those forms for use in reporting hereunder or, if deemed appropriate by the Parties to implement the purposes of this MOU and to ensure the efficient working of the audit, to agree to modification to those forms. Thereafter, each Party has a right of suggesting changes to the reporting forms and the requirements for their submission. Parties will jointly discuss acceptance of such changes. The Working Group upon mutual agreement of the Parties shall approve Rules of Procedure specifying phases, deadlines, submission and approval of the Report.
3. The individual reports to be submitted to the audit company as set forth below shall contain the following information:
  - (1) Report of the Working Group about payments received by the Government of the Republic of Kazakhstan from the Companies operating in the extractive industries of the Republic of Kazakhstan;

(2) Reports of the Companies operating in the extractive industries of the Republic of Kazakhstan about payments to the Government of the Republic of Kazakhstan.

4. In order to ensure transparency and independence in reviewing and reconciling the reports submitted by the Working Group and the Companies, as well as to draft findings based on such reports, the Parties will select on a competitive basis a multinational audit company to be chosen from among the «Big four» accountancy firms (i.e. Deloitte, Ernst & Young, KPMG, and PricewaterhouseCoopers).
5. To select an audit company on a competitive basis, the Parties shall establish a Selection Group. The Working Group, the Group of Companies, the Parliament of RK and the Coalition of NGOs shall each assign two representatives to the Selection Group. Each representative shall hold one vote. All decisions shall be made in accordance with the terms and the criteria for the selection of an audit company (Appendix 5) and the Rules of Procedure of the Selection Group (Appendix 6). The Republic of Kazakhstan shall be solely responsible for arranging financing for and payment of the audit company's services from international institutions or the Republican budget.
6. For the purpose of completing, submitting, analysing, reconciling and publishing the reports the following sequence shall be adopted:
  - a) The audit company that is to collect and reconcile the data shall be selected by the Selection Group, and an agreement on the provision of the appropriate services (based on the scope of work set out in Appendix 5) shall be concluded between the audit company and the Working Group. The mechanism for payment of the audit company's service fees shall form part of the agreement between the Working Group and the audit company that is selected. A copy of this agreement shall be provided to the other Parties to this Memorandum.
  - b) The Working Group shall send to the Companies a letter of instruction concerning reporting forms to be filled out and submitted to the audit company by the specified reporting dates (May 1).
  - c) The audit company shall compile, aggregate, reconcile and analyse the reports submitted to it by the Working Group and by the Companies.
  - d) The audit company shall at all times keep the individual reports submitted by the Companies strictly confidential and shall not disclose or divulge these reports in whole or in part to any other Parties to the Memorandum, any third parties or the public unless authorized by each submitting company. Being committed to the further development

of EITI in Kazakhstan and recognizing importance of the maximum transparency of information on revenues from the extractive industry, Parties, in the framework of the National Stakeholders' Council, shall continue discussion of other actions that would further the goal of transparency.

- e) The audit company's report shall be submitted to all the Parties within 60 days after the deadline for submission of all reports to the audit company, provided that all measures set out in Appendix 5 have been taken to resolve any inconsistencies. In the event that all taken measures set in Appendix 5 will fail to enable the audit company to resolve or explain the discrepancies or inconsistencies, the aggregate report of an auditing company shall be published in full depicting all the discrepancies and tools that have been used for their removal in the reports.
  - f) In case the audit company's report reveals significant unresolved discrepancies or inconsistencies, the audit company shall investigate causes of such discrepancies or inconsistencies, work out recommendations to address the situation and inform the National Stakeholders' Council about the results.
- 7. The Parties shall not exclude the possibility of delays, deficiencies, and technical errors at the initial stage of report submission and shall accept the necessity for their elimination with goodwill and in cooperation with the audit company.
  - 8. The Parties may develop, agree and publish a joint press-release on the audit results in addition to the publication of the audit company's report.
  - 9. The Parties agree that the initial consolidated report will cover the year 2004. Taking into consideration that these reports are to be submitted for the first time, the deadline for submitting such initial reports shall be agreed upon specifically among the Parties within 30 days of the date of signing the Memorandum.
  - 10. This Memorandum shall be effective upon the date that all Parties have signed it. Any Party may withdraw from the Memorandum upon prior written notice to all the Parties specifying the date of withdrawal. The provisions of article 11 of the Memorandum shall continue to apply to any withdrawn Party.
  - 11. The Parties agree to treat all materials received in relation to the Memorandum that is not publicly available as strictly confidential until such time as all Parties unanimously agree upon its disclosure or publication. The Working Group upon mutual agreement of the Parties shall approve the list



of materials that shall be published in the press for a wide discussion of the aggregate Report.

12. Except for Article 10 and Article 11, this Memorandum of Understanding is a statement of intention only and merely creates a basis for implementation and development of the extractive industries transparency initiative in the Republic of Kazakhstan.
13. A Company holding subsurface use rights in extractive industries shall not be obliged to disclose any information pursuant to this Memorandum or otherwise unless it establishes, to its own satisfaction, that such disclosure will not contravene any of its own or its affiliates, partners or contractors obligations to preserve confidentiality or similar obligations, imposed by any applicable subsurface use contract, production sharing agreement, concession agreement, law or otherwise.

**The Memorandum is signed on 5<sup>th</sup> October 2005 in Almaty in three originals in Kazakh, Russian and English languages, all the version shall have equal legal force.**

The Ministry of Energy and Mineral Resources of the Republic of Kazakhstan shall be depository for the originals of the Memorandum on behalf of the Working Group, the Parties shall be given copies of the Memorandum certified by the Ministry. The reporting forms, the documents of the Selection Group and other documents concerning implementation of the Memorandum shall be kept in archive of Ministry of Energy and Mineral Resources of the Republic of Kazakhstan.

**On behalf of the Working Group for drawing recommendations and positions of Kazakhstan on implementation of the British Initiative on Extractive Industries Transparency**

Minister of Energy and Mineral Resources of the Republic of Kazakhstan

Vladimir Shkolnik

**On behalf of the Parliament of the Republic of Kazakhstan**

Itegulov Maral Sergaziyevich

Nazarbayeva Dariga Nursultanovna

Cherdabayev Ravil Tazhikarauly

Taspihov Amangeldy Satybaldiyevich

## Group of Companies

To sign the Memorandum of Understanding on the Extractive Industry Transparency Initiative Implementation in the Republic of Kazakhstan

<sup>1</sup>	Name of the Company	Position	Name	Signature
1	KazMunaiGas	President	Karabalin U.S.	
2	Nelson Resources	President	Kuandykov B.M.	
3	ExxonMobil Kazakhstan	General Manager	D. Willis	
4	Nations Energy (Karazhanbasmunai)	1 <sup>st</sup> vice-president	M.G. Long	
5	Kazakhoil Aktobe	Technical Director	K. Makhutov	
6	Karakudukmunai	Financial Director	K. Rakhishev	
7	JV Arman	General Director	M.M.F.M. Lensvelt	
8	Maersk oil Kazakhstan GMBH	Managing Director	Andreas Damgaape	
9	ChevronTexaco International Petroleum Co.	Vice President	T.A. Etchison	
10	Phillips Petroleum Kazakhstan ltd	President	A. Holhjein	
11	Inpex North Caspian	Director	Y. Okawa	
12	B.N. Munai LLP	Director	Dr. D. Robson	
13	Total E&P Kazakhstan	General Manager	Alain Langlois	
14	Repsol Exploracion Kazakhstan	General Manager	Miguel Carvalan	
15	Shell Kazakhstan Development BV	General Manager	Martin Ferstl	
16	BG Karachaganak Limited	Representative	Lewis Affleck	
17	KKM Operating Company	President	A. Utesinov	
18	Aral Petroleum Capital	General Director	C. Summers	
19	Ravninnoe oil ltd	Chief Geologist	Aip Supygaliev	
20	JV PetroKazakhstan Kumkol Resources	President	T. Dvorak	
21	Statoil	Executive Vice-President	Petu Wellcue	
22	JSC CNPC International Aktobe Petroleum	Deputy General Director	Liu Shaoyou	
23	Agip Caspian Sea B.V. Agip Karachaganak BV	Chairman	P. Cavanna	
24	Lukoil Overseas Service Ltd	Director for Kazakhstan	B. Zilbermints	

### Annex 3

#### Flows of Financial Receipts from the Oil & Gas and Mining Sector in the Republic of Kazakhstan for the year \_\_\_\_\_

No.	Indicator	Unit (mln. tenge)	Unit (tons of crude oil)	Unit (cubic meters of gas)
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>1</b>	<b>Total royalties paid:</b>			
	<i>Royalties (including):</i>			
a)	RFCMR			
b)	MRRF			
c)	FRP			
d)	Payments to the National Oil Fund			
<b>2</b>	<b>Bonuses</b>			
<b>3</b>	<b>Excess profits tax</b>			
<b>4</b>	<b>Compensation Payments on Historical Costs</b>			
<b>5</b>	<b>Share of RK in PSA:</b>			
a)	Payments to the budget			
b)	Payments to the National Oil Fund			
<b>6</b>	<b>Corporate Income Tax:</b>			
a)	Payments to the budget			
b)	Payments to the National Oil Fund			
<b>7</b>	<b>Value Added Tax</b>			
<b>8</b>	<b>Excise</b>			
<b>9</b>	<b>Rental Tax on Exported Oil</b>			
<b>10</b>	<b>Other taxes and payments to the budget</b>			
<b>11</b>	<b>Total</b>			

RFCMR – National Fund for Conservation of Mineral Resources

MRRF – Mineral Resource Renewal Fee

FRP – Fixed Rent Payments

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